

# MASSACHUSETTS TEACHERS ASSOCIATION

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January 20, 2009

Joseph LeBlanc, President  
Massachusetts Community College Council/MTA  
27 Mechanic Street, Ste 104  
Worcester, MA 01608-2402

**RE: MTA Case No. 529-3615, Legal Opinion: Conversion to HRCMS and Post-Retirement Earnings**

Dear Professor LeBlanc:

You have requested a legal opinion whether the conversion to HRCMS of Division of Continuing Education (DCE) faculty payrolls will affect the amount of salary that a retired Day Unit member may legally earn from work as an adjunct in the DCE while collecting a state pension. As detailed below, the legal answer is “no,” although the conversion may have a practical effect in more readily providing information on earnings to the State Retirement System.

From a strictly legal standpoint, the conversion to HRCMS is immaterial to the amount that a retired faculty member might legally earn, as that issue is governed by a specific statute: G.L. c. 32, § 91(b). However, as the Request for Legal Services suggests, from a practical standpoint, conversion to HRCMS may make it more efficient for the State Retirement Board to determine whether a retired faculty member has reached or exceeded the limit. However, *the actual, legal retiree earnings limit is unaffected by conversion to HRCMS.*

As you know, G.L. c. 32, § 91(b) sets two limits on retiree earnings when s/he is “employed in the service of the commonwealth . . . .” A retiree may not work in excess of 960 hours in any calendar year and the sum of the retiree’s pension and additional state earnings may not exceed the current salary of the position from which s/he retired.

As you can see from the quoted statutory language, the limit applies to retirees “employed in the service of the commonwealth.” Since DCE faculty who are paid outside of the HRCMS system are equally “employed in the service of the commonwealth” as DCE faculty

Joseph LeBlanc, MCCC Chapter President

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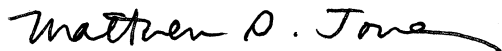
paid through HRCMS, the conversion to HRCMS is immaterial to the amount that a retired faculty member may legally earn while employed in the DCE Unit.

One of the e-mails sent with the Request for Legal Services suggests that because DCE faculty are paid out of trust fund accounts at "no cost to the public system," they would not be subject to the earnings limitation if they are paid outside of HRCMS. Legally, this is inaccurate. Since the source of funding for a state salary (e.g., trust fund versus state appropriation) does not affect whether a DCE faculty member is "employed in the service of the commonwealth," a DCE member whose salary is funded out of a trust fund and who is paid outside of HRCMS is equally subject to the retiree earnings cap for their DCE work.

In short, conversion to HRCMS has no *legal* effect on the earnings cap. However, the potential *practical* effect of HRCMS conversion may be to reduce the probability of exceeding the legal earnings limit without detection.

I hope that this opinion is helpful. Please do not hesitate to contact me if you have any further questions.

Very truly yours,



Matthew D. Jones

MDJ/183637

cc: Miles Stern